

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4469

IN THE MATTER OF:

Served January 5, 1995

Application of JET TOURS USA, INC.,)
Trading as CITY TOURS, WASHINGTON,)
D.C., for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-94-50

Formal Complaint of EASY TRAVEL,)
INC., Against JET TOURS USA, INC.,)
and CITY TOURS USA, INC.)

Case No. FC-94-01

On August 25, 1994, Easy Travel, Inc., WMATC Carrier No. 162, (complainant), filed a formal complaint against Jet Tours USA, Inc., and City Tours USA, Inc. (respondents).

On October 12, 1994, the parties met informally with the Commission's General Counsel. Agreement was reached on a proposed resolution of the complaint whereby Jet Tours would file an application for operating authority and upon respondents' request the formal complaint proceeding would be stayed pending a decision on the application.

On October 17, 1994, Jet Tours filed its application for operating authority and respondents filed their request for a stay of the formal complaint proceeding. The request recited the terms of the October 12 agreement:

This will . . . confirm that [respondents] have agreed that, pending submission of the formal Application by Jet Tours USA, Inc. d/b/a City Tours, Washington, D.C. and pending final action on said Application by the WMATC, all service for which WMATC authority is required will be performed by a person or entity who holds the proper authority from the WMATC and such person or entity will also provide any licensed tour guide which may be required.

The Commission subsequently stayed the formal complaint proceeding.¹

In a letter dated October 28, 1994, and directed to the attention of the Commission's General Counsel, respondents affirmed their continued compliance with the terms of the October 12 agreement. In a letter dated October 31 and addressed to complainant's attorney, respondents specifically represented that tour guides were being "hired and paid for by BBC" (WMATC Carrier No. 227), which, according

¹ Easy Travel, Inc., v. Jet Tours USA, Inc., No. FC-94-01, Order No. 4410 (Oct. 20, 1994).

to respondents, was currently providing charter service under its "published tariff." In a letter dated November 2 and addressed to complainant's attorney, BBC confirmed providing charter services under its "WMATC General Tariff" to "City Tours," but denied having hired tour guides. In a letter dated November 7 and directed to the attention of the Commission's General Counsel, respondents acknowledged that "City Tours" -- and not BBC -- had indeed hired the tour guides, but that unlike the tour organizer in Order No. 1560,² which was found to be conducting passenger transportation for hire without a certificate of authority, "City Tours does not sell tickets in the Metropolitan District," and that City Tours does not sell tickets for the Metropolitan District portion of tours beginning and ending elsewhere.

On November 22, Easy Travel filed a motion to lift the stay in the formal complaint proceeding, relying on the apparent breach of the October 12 agreement and an affidavit alleging the purchase of "two individual night tours of Washington, D.C. from . . . Gustavo Rife," and further alleging that "Mr. Rife is a Jet Tours or City Tours employee." (Affidavit of Lloyd M. Ginnish). Easy Travel also filed a motion to consolidate the formal complaint proceeding with the Jet Tours application proceeding, a protest to Jet Tours' application and a request for "formal hearing on all outstanding issues."

On December 6, respondents filed a motion to dismiss the complaint and deny and dismiss the protest. Respondents argue that City Tours USA organizes group tours commencing in foreign countries and that the members of the group arrive in the Metropolitan District together and depart as a group. Respondents' affidavits in support, however, confirm that on the night of November 12, 1994, outside the Ramada Renaissance Hotel in Washington, DC, two persons boarded a tour bus chartered by City Tours USA with the understanding that they would receive a night tour of DC. One of these two persons presented a check to the tour guide who had been hired by City Tours USA. These persons had not arrived in DC with the other passengers on the tour bus. Respondents explain that they were duped into believing these persons were part of a City Tours group and were merely rejoining a tour in progress, the land portion of which had originated in NY as a roundtrip motorcoach tour of DC and Niagara Falls.

DISCUSSION AND CONCLUSION

The Compact, Title II, Article XIII, Section 1, provides in pertinent part:

(a) A person may file a written complaint with the Commission regarding anything done or omitted by a person in violation of a provision of this Act, or in violation of a requirement established under it.

(b)(i) If the respondent does not satisfy the complaint and the facts suggest that there are reasonable grounds for an investigation, the Commission shall investigate the matter.

² In re Holiday Tours, Inc., No. 308, Order No. 1560 (May 24, 1976).

(ii) If the Commission determines that a complaint does not state facts which warrant action, the Commission may dismiss the complaint without hearing.

One measure of whether the complaint has been satisfied is whether the parties have been able to "settle the dispute informally."³ Where an "informal conference among the parties" fails to resolve the controversy, the complaint may be deemed not satisfied.⁴ Naturally, if in the Commission's opinion the conduct complained of has been "voluntarily discontinued," the complaint may be dismissed.⁵

We cannot say on this record that the complaint has been satisfied. The parties clearly have not settled their differences informally, and the October 12 agreement stands breached.⁶ Moreover, there are clear indications that the conduct complained of may not have been fully discontinued. We must decide, therefore, whether there are reasonable grounds for an investigation or, conversely, whether the complaint nevertheless should be dismissed. In other words, we must test the sufficiency of the complaint.

A complaint is sufficient if it fairly makes out a claim that respondent has violated the Compact.⁷ The Commission may consider any documents attached to the complaint⁸ and may reserve judgment until supporting affidavits are filed.⁹ The record to date suggests reasonable grounds for an investigation exist.

³ WMA Transit Co. v. Owens, No. 38, Order No. 248 (Apr. 17, 1963).

⁴ W.V.&M Coach Co. v. Scenic Coach Rental, Inc., No. 165, Order No. 770 (Jan. 10, 1968).

⁵ D.C. Transit Sys., Inc., v. Eyre, Formal Complaint No. 19, Order No. 740 (Sept. 29, 1967).

⁶ Respondents argue that the agreement has not been breached but admit that City Tours and not BBC hired tour guides for use on BBC's vehicles. Our observation in this regard should not be viewed as a finding that the Compact has been violated but merely that respondents failed to ensure that the person or entity hiring the tour guide possessed WMATC authority.

⁷ Executive Limo. Serv., Inc., v. Gibson, No. 373, Order No. 1683 (May 6, 1977).

⁸ McMichael School Bus Serv., Inc., v. Omnibus Corp., No. 367, Order No. 1668 (Apr. 5, 1977).

⁹ American Coach Lines, Inc., v. Easy Travel, Inc., No. FC-89-03, Order No. 3444 (Dec. 21, 1989).

The complaint contains the following material allegations:

6. Jet Tours and/or City Tours have and continue to engage in the transportation of passengers for hire in the Metropolitan District without a Certificate of Authority from the Commission to engage in such operations.

7. Jet Tours and/or City Tours operate a van in the Metropolitan District conducting tours without authorization.

According to BBC's letter of November 2, BBC charters vans to City Tours for sightseeing tours within the Metropolitan District on a routine basis, and City Tours provides the guide who directs the itinerary of BBC's vehicle and driver. The record thus suggests the presence of some of the factors identified in Holiday Tours, Inc. v. WMATC, 352 F.2d 672 (D.C. Cir. 1965) for determining whether a tour operator controls the instrumentalities of transportation to such a degree as to warrant a finding that it is engaged in transportation of passengers for hire.¹⁰ Further, with regard to the night tour on November 12, although roundtrip carriage commencing and ending outside the Metropolitan District under an ICC certificate normally is not within this Commission's jurisdiction, D.C. Transit Sys., Inc. v. WMATC, 420 F.2d 226 (D.C. Cir. 1969), adding passengers in midstream may dictate a different conclusion.¹¹

Respondents' argument that the Commission's jurisdiction is fettered by the Commerce Clause is not well taken. The Commission acts pursuant to an interstate compact consented to by Congress under the Compact Clause of the United States Constitution, art. I, § 10, cl. 3. Although not every compact requires congressional consent, where Congress has authorized States to enter into an agreement and the subject matter of the agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the agreement into federal law. Cuyler v. Adams, 449 U.S. 433, 101 S.Ct. 703, 707-08 (1981).

¹⁰ Of course, respondents are entitled to the presumption that the entity providing both the vehicle and the driver is the carrier. In re Annette H. Milling t/a Milling Tours, No. 322, Order No. 1665 (Mar. 29, 1977), aff'd, Order No. 2000 (June 6, 1979).

¹¹ See, D.C. Transit, 420 F.2d at 227 (no WMATC jurisdiction where no passengers added to or subtracted from original party); Compact, tit. II, art. XI, § 3(e) (exemption for passengers joining group originating outside Metropolitan District only applicable if transportation conducted under regular route certificate from ICC).

Under the Washington Metropolitan Area Transit Regulation Compact -- a federal statute¹² -- the Commission's jurisdiction is coextensive with the Metropolitan District, an area covering all of DC and portions of MD and VA.¹³ The Commission has dominion over private for-hire transportation by motor vehicle between two points in the Metropolitan District. Executive Limo. Serv. v. Goldschmidt, 628 F.2d 115 (D.C. Cir. 1980). Clearly, the Commission's activities have a substantial impact on interstate commerce and are appropriate for congressional legislation under the Commerce Clause. WMATA v. One Parcel of Land, 706 F.2d 1312, 1317 (4th Cir. 1983). Thus, far from acting as a shackle on the Commission's regulatory powers, the Commerce Clause is the very source of the Commission's interstate mandate.

As the caption indicates, the formal complaint proceeding is being consolidated with the application proceeding. Commission Regulation No. 20-02 provides for consolidation of proceedings which have a common question of fact or law. The common issue here is Jet Tours' compliance fitness or lack thereof.¹⁴ Consolidation is particularly appropriate where as here the outcome of the investigation may have a dispositive effect in the application proceeding.¹⁵

Before we order a formal hearing, we shall require respondents to produce records in their possession, custody or control having a reasonable connection with respondents' activities in the Metropolitan District occurring after the response to Easy Travel's informal complaint. Respondents are admonished not to construe this production requirement narrowly. Recognizing the commercial sensitivity of such information, respondents may submit said records under seal, for Commission eyes only, including Commission staff.

THEREFORE, IT IS ORDERED:

1. That the motion of Easy Travel to lift the stay in FC-94-01 is hereby granted.

¹² Washington Metropolitan Area Transit Regulation Compact, Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990) (codified at D.C. CODE ANN. § 1-2411 (1992); MD. TRANSP. CODE ANN. § 10-203 (1993); VA. CODE ANN. §§ 56-529 (Michie 1986 & Supp. 1993)) (originally enacted as Pub. L. No. 86-794, 74 Stat. 1031 (1960), as amended by Pub. L. No. 87-767, 76 Stat. 765 (1962)).

¹³ Compact, tit. I, art. I.

¹⁴ While the parties have focused much of their attention on City Tours, the record shows Jet Tours has played an important part in arranging ground transportation and sightseeing tours for City Tours' clients.

¹⁵ In re Mustang Tours, Inc., No. AP-93-30, Order No. 4189 (Oct. 18, 1993); see Executive Limo. Serv., Inc., v. Gibson, No. 373, Order No. 1683 (May 6, 1977) (formal complaint proceeding consolidated with application proceeding).

2. That the motion of Easy Travel to consolidate FC-94-01 with AP-94-50 is hereby granted.

3. That consideration of Easy Travel's protest and request for formal hearing shall be deferred pending respondents' submission of documents.

4. That respondents' motion to dismiss the complaint is hereby denied.

5. That respondents' motion to dismiss Easy Travel's protest is hereby denied.

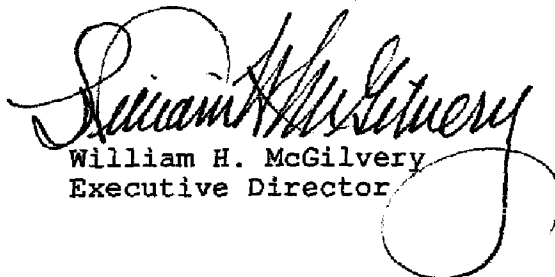
6. That on or before January 26, 1995, respondents shall submit to the Commission all records in their possession, custody or control having a reasonable connection with respondents' activities in the Metropolitan District during the period beginning July 22, 1994, and ending on the date of this order, including, but not limited to: receipts, invoices, vouchers, sightseeing brochures, itineraries, purchase orders, memoranda, correspondence, accounting records, computer records, desk calendars, phone bills, leases, bank records.

7. That respondents shall request passenger carriers, tour guide services, and travel agents and brokers ("third parties") with whom respondents have transacted business to forward directly to the Commission on or before January 26, 1995, all records in said third parties' possession, custody or control having a reasonable connection with respondents' activities in the Metropolitan District during the period beginning July 22, 1994, and ending on the date of this order.

8. That Jet Tours USA shall request all banks in the Metropolitan District at which it maintains, or has maintained, an account, or accounts, to forward directly to the Commission on or before January 26, 1995, copies of all deposit tickets, deposit items and canceled checks, processed by said banks with respect to said account, or accounts, during the period beginning July 22, 1994, and ending on the date of this order.

9. That City Tours USA shall request all banks in the Metropolitan District at which it maintains, or has maintained, an account, or accounts, to forward directly to the Commission on or before January 26, 1995, copies of all deposit tickets, deposit items and canceled checks, processed by said banks with respect to said account, or accounts, during the period beginning July 22, 1994, and ending on the date of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND SHANNON:


William H. McGilvery
Executive Director